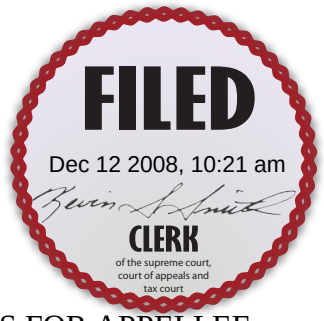

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IN THE COURT OF APPEALS OF INDIANA

ALVINO PIZANO,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 45A03-0808-CR-389
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0505-FC-66

December 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Alvino Pizano appeals the trial court's dismissal of three motions he filed against the Indiana Department of Correction (the "DOC") and its agents relating to a DOC policy that requires Pizano to participate in its Sex Offender Management and Monitoring Program (the "Program"). On appeal, Pizano raises one issue, which we restate as whether the trial court properly dismissed Pizano's motions for lack of subject matter jurisdiction. Concluding the trial court lacked subject matter jurisdiction because Pizano failed to exhaust his administrative remedies with the DOC, we affirm.

Facts and Procedural History

On May 13, 2005, the State charged Pizano with two counts of child molesting, one as a Class A felony and one as a Class C felony. At a later date (the record is unclear when), the State charged Pizano with child molesting, a Class C felony, and neglect of a dependent, a Class D felony. On April 4, 2007, Pizano entered into an agreement under which he agreed to plead guilty to child molesting as a Class B felony and neglect of a dependent as a Class D felony. In exchange for Pizano's plea, the State agreed that the executed portion of Pizano's sentences for child molesting and neglect of a dependent would not exceed ten years and two years, respectively. The agreement also stated the trial court could impose consecutive sentences. On April 27, 2007, the trial court accepted Pizano's guilty plea and sentenced him to twelve years with the DOC.

On February 12, 2008, while in the custody of the DOC, Pizano signed a notice agreeing to participate in the Program. According to the notice, the Program provides sex offenders such as Pizano "with the opportunity to explore their offending behaviors and

to begin to modify their behavior and thinking errors." Appellant's Appendix at 48. The notice purports to give sex offenders the option to participate in the Program, but the appearance of choice is illusory – the notice goes on to state that refusal to participate will result in disciplinary action. A DOC directive relating to the Program provides further detail on the nature of such disciplinary action, stating that a sex offender who refuses to participate in the Program will be charged with refusal to participate in a mandatory program and that if the charge is sustained, the sex offender will be demoted to Class III credit time[1] and "recommended to the Superintendant to be placed on non-contact visits . . . ." Id. at 46. The DOC directive further states that repeated instances of refusing to participate may result in the DOC depriving the sex offender of credit time already earned.

Feeling he had been unfairly coerced, on May 16, 2008, Pizano filed three motions with the trial court that, in relevant part, sought to preliminarily and permanently enjoin the DOC from requiring him to participate in the Program. Pizano based his request for injunctive relief on his plea agreement, arguing that because his plea agreement did not mention that he participate in the Program, the DOC could not require him to do so. On May 20, 2008, the trial court entered an order dismissing Pizano's motions for lack of subject matter jurisdiction. Pizano now appeals.

Discussion and Decision

Pizano argues the trial court improperly concluded it lacked subject matter jurisdiction. "[S]ubject matter jurisdiction entails a determination of whether a court has

[1] Indiana Code section 35-50-6-3 grants a DOC inmate "credit time" for each day the inmate is imprisoned. The amount of credit time an inmate earns for each day depends on the "Class" to which the inmate is assigned, except that an inmate assigned to Class III does not earn any credit time. See Ind. Code § 35-50-6-3(c).

jurisdiction over the general class of actions to which a particular case belongs." Samuels v. State, 849 N.E.2d 689, 690 (Ind. Ct. App. 2006), trans. denied. In making this determination, "[t]he only relevant inquiry . . . is to ask whether the kind of claim which the plaintiff advances falls within the general scope of authority conferred upon such court by the constitution or by statute." State v. Schuetter, 503 N.E.2d 418, 420 (Ind. Ct. App. 1987). We review de novo the trial court's determination of whether it lacked subject matter jurisdiction. See Truax v. State, 856 N.E.2d 116, 121 (Ind. Ct. App. 2006).

Pizano's claim for injunctive relief, though purportedly based on his plea agreement, in substance challenges the DOC's policy of requiring sex offenders to participate in the Program on pain of demotion to a lower credit time class and deprivation of credit time already earned. Pizano's challenge not only runs against statutes authorizing the DOC to implement such a policy, but, more significantly, against a statute that grants an inmate the right to administratively appeal any DOC decision that adversely affects the inmate's credit time class or credit time deprivation. Indiana Code section 35-50-6-4(c) authorizes the DOC to demote an inmate to a lower credit time class if the inmate violates one or more of the DOC's rules. The DOC also is statutorily authorized to deprive an inmate of credit time already earned if the inmate "refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction." Ind. Code § 35-50-6-5(a)(6). In cases where the DOC seeks to exercise this authority, it must afford the inmate with due process guarantees such as

notice and a fair hearing, see Ind. Code §§ 35-50-6-4(c) and -5(b), as well as the right to administratively appeal an adverse decision: "A person who has been reassigned to a lower credit time class or has been deprived of earned credit time may appeal the decision to the commissioner of the department of correction," Ind. Code § 35-50-6-5.5.

These statutes foreclose any possibility that the trial court had subject matter jurisdiction over Pizano's claim in the first instance. This court has stated consistently that a trial court lacks subject matter jurisdiction where administrative remedies exist and the plaintiff fails to exhaust those remedies. See, e.g., Watkins v. State, 869 N.E.2d 497, 500 (Ind. Ct. App. 2007); Hecht v. State, 853 N.E.2d 1007, 1013 (Ind. Ct. App. 2006), trans. denied; Members v. State, 851 N.E.2d 979, 983 (Ind. Ct. App. 2006); see also Higgason v. Lemmon, 818 N.E.2d 500, 503 (Ind. Ct. App. 2004) (explaining that the exhaustion doctrine "avoids premature litigation, permits the compilation of an adequate record for judicial review, and affords agencies the opportunity and autonomy to correct their own errors"), trans. denied. Indiana Code section 35-50-6-5.5 extends such a remedy to Pizano, and because the record does not indicate he undertook any efforts to exhaust his remedy, it follows that the trial court properly concluded it lacked subject matter jurisdiction.[2]

Conclusion

The trial court properly concluded that it lacked subject matter jurisdiction over Pizano's claim.

[2] We note in closing that there are several exceptions to the exhaustion doctrine, see, e.g., Johnson v. Celebration Fireworks, Inc., 829 N.E.2d 979, 983-84 (Ind. 2005), but Pizano neither alleges, nor does the record disclose, that any of them apply here. We also note that because we dismiss Pizano's claim for lack of subject matter jurisdiction, we do not confront the issue of whether Pizano's qualifies as a "prison discipline" case that is exempt from judicial review. See Ind. Code § 4-21.5-2-5(6); Blanck v. Ind. Dep't of Corr., 829 N.E.2d 505, 510 (Ind. 2005).

Affirmed.

NAJAM, J., and MAY, J., concur.